

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Gary E. King
14740027,

Plaintiff,

v.

Unnamed Defendants,

Defendants.

Case No.: 3:15-cv-01828-LAB-WVG

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

Gary E. King (“Plaintiff”), currently incarcerated at San Diego Central Jail located in San Diego, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of

1 \$400. *See* 28 U.S.C. § 1914(a).¹ An action may proceed despite a plaintiff's failure to
 2 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C. §
 3 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v.*
 4 *Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, if the Plaintiff is a prisoner, and even
 5 if he is granted leave to commence his suit IFP, he remains obligated to pay the entire filing
 6 fee in "increments," *see Williams v. Paramo*, 775 F.3d 1182, 1185 (9th Cir. 2015),
 7 regardless of whether his case is ultimately dismissed. *See* 28 U.S.C. § 1915(b)(1) & (2);
 8 *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

9 Plaintiff has not prepaid the \$400 in filing and administrative fees required to
 10 commence this civil action, nor has he submitted a properly supported Motion to Proceed
 11 IFP pursuant to 28 U.S.C. § 1915(a). Therefore, his case cannot yet proceed. *See* 28 U.S.C.
 12 § 1914(a); *Andrews*, 493 F.3d at 1051.

13 **II. Conclusion and Order**

14 For the reasons set forth above, the Court hereby:

15 (1) **DISMISSES** this action sua sponte without prejudice for failure to pay the
 16 \$400 civil filing and administrative fee or to submit a Motion to Proceed IFP pursuant to
 17 28 U.S.C. §§ 1914(a) and 1915(a); and

18 (2) **GRANTS** Plaintiff **forty-five (45)** days leave from the date this Order is filed
 19 to: (a) prepay the entire \$400 civil filing and administrative fee in full; or (b) complete and
 20 file a Motion to Proceed IFP which includes a certified copy of his trust account statement
 21 for the 6-month period preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);
 22 S.D. Cal. CivLR 3.2(b).

25 ¹ In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$50.
 26 *See* 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14
 27 (eff. Dec. 1, 2014). The additional \$50 administrative fee does not apply to persons granted leave to
 proceed IFP. *Id.*

IT IS FURTHER ORDERED that the Clerk of the Court shall provide Plaintiff with this Court's approved form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*." If Plaintiff fails to either prepay the \$400 civil filing fee or complete and submit the enclosed Motion to Proceed IFP within 45 days, this action will remain dismissed without prejudice based on Plaintiff's failure to satisfy 28 U.S.C. § 1914(a)'s fee requirements and without further Order of the Court.

In addition, the Clerk of Court shall provide Plaintiff with a court approved form § 1983 complaint.

IT IS SO ORDERED.

Dated: August 18, 2015

Larry A. Zinner

Hon. Larry Alan Burns

United States District Judge